IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10227 of 1999

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

==========

HEMUBHA AKHUBHA CHUDASAMA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
NOTICE SERVED for Petitioner
MISS KIRAN PANDEY AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
20th November, 2007

ORAL JUDGMENT

Though served, the petitioner has not entered appearance.

This petition, preferred under *Articles* 226 & 227 of the Constitution of India, arises from the

proceeding under the Gujarat Agricultural Lands Ceiling Act, 1960 [hereinafter referred to as, "***the Act***"]. The petitioner is the holder of the lands situated at villages-Pipli and Buranpur of Taluka Dhandhuka, District-Ahmedabad admeasuring 82 Acres & 17 Gunthas in aggregate.

In compliance with Section 10 [1](d) of the Act, the petitioner declared his aforesaid holding of 82 acres 17 gunthas of agricultural lands. According to the petitioner, as on the specified date, his family comprised of himself, his wife, three minor sons and three minor daughters – in all eight persons. The petitioner was, therefore, entitled to hold lands equivalent to one and 3/5th of the ceiling area. The whole of the land being jirayat land [dry-*crop land*], the ceiling area was 54 acres. Considering additional 3/5th of the ceiling area, he had a right to hold lands admeasuring 86 acres-16 gunthas. He, therefore, did not hold lands in excess of the ceiling limit. *The* Mamlatdar & ALT was, by his Order dated 23rd March, 1977, pleased to hold that the daughters were not included in the family.

The family of the petitioner, therefore, consisted not more than five persons. The petitioner was not entitled to hold land in excess of the ceiling area. The ceiling area being 54 acres, the lands admeasuring 28 Acres and 17 gunthas were held excess, liable to be acquired under the Act. The said order was confirmed by the Deputy Collector by his Order dated 22nd June, 1977 made on Ceiling Appeal No. 107 of 1977 and by the Gujarat Revenue Tribunal, Ahmedabad [hereinafter referred to as, "***the Tribunal***"] by its judgment and order dated 8th March, 1978 passed in Revision Application No. TEN.B.A.1248 of 1977. Feeling aggrieved, the petitioner had preferred Review Application No. TEN.C.A 48 of 1996 before the Tribunal which came to be rejected on 3rd December, 1999. Feeling aggrieved, the petitioner has preferred the present petition against the judgment and order dated 8th March, 1978 passed by the Tribunal.

Section 6 of the Act imposes restriction on holding land in excess of the ceiling area. Sub-section [2] thereof provides for grouping of the holding separately held by the spouse or minor

children of an individual. It provides that, "***where an individual, who holds lands, is a member of a family, not being a joint family which consists of the individual and his spouse or more than one spouse and their minor sons and minor unmarried daughters..***" Sub-section 3 [b] of the said Section 6 provides, *inter alia*, that, "***where a family consists of more than five members comprising a person and other members belonging to all or any of the following categories, namely; (i) minor son, (ii) widow of a pre-deceased son, (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead; such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so, however, that the total holding of the family does not exceed twice the ceiling area and in such a case, in relation to the holding of such family, such family, such area shall be deemed to be the ceiling area***." It is this provision, relying upon which, the Tribunal has held that, "***..it is clear that minor daughters and wife of the applicant cannot be included while counting the total***

number of members".

The authorities below and the Tribunal have accepted that there were eight members in the family of the petitioner comprising himself, his wife, three minor sons and three minor daughters. It is also accepted that as on the specified date, the total holding of the petitioner was 82 acres & 17 gunthas of jirayat land [*dry-crop land*] and that 54 acres was the ceiling area. The only question that requires consideration is whether the petitioner's family had eight members in all as urged by the petitioner, or whether his wife and minor daughters should be excluded from his family for the purpose of the Act. I am of the opinion that sub-section [2] of Section 6 of the Act makes it explicit that an individual, his spouse, their minor sons and minor daughters constitute a '*Family*'. The Tribunal has manifestly erred in holding that the wife and the daughters are not the members of the family of a person for the purpose of the Act. Considering the three minor sons and eight members of his family, the petitioner had rightly, in consonance with Section 6 [3B] of the Act, claimed right to hold additional land equivalent

to 3/5th of the ceiling area. The claim was wrongly rejected by the authorities below and the Tribunal as well. It is clear that on the specified date the petitioner was entitled to hold additional lands equal to 3/5th of the ceiling area i.e, 86 acres and 16 gunthas. The petitioner's holding of 82 acres and 17 gunthas, therefore, was less than the ceiling area as envisaged by Section 6 {3B} of the Act.

That is the view expressed by this Court earlier in the matter of ***Nathekhan Sojalkhan Bihari v. Mamlatdar, Vadgam & Ors***. [1984 (2) GLR 1473]. In the said matter, this Court had occasion to consider the very provision under Section 6 [3B] of the Act. The Court held that, "***..A bare perusal of this sub-section makes it clear that in order to avail of the benefit of enlargement of the ceiling area, two conditions must be satisfied, namely, (i) the family should consist of more than five members and (ii) it should have amongst it the categories of members mentioned in the three sub-clauses. If a family does not consist of more than five members but has amongst it any of the members mentioned in the three sub-clauses, it will not be entitled to the benefit of***

enlargement of the ceiling area. Therefore, the benefit of enlargement of the ceiling area will enure to only that family where the total number of members is more than five and amongst them are members belonging to the categories mentioned therein. However, there is nothing in the sub-section wherefrom it can be inferred that the wife, widowed mother and unmarried daughters were intended to be excluded from the family, that is, group or unit constituting the family." This view has been approved by the *Hon'ble* Supreme Court in the matter of ***State of Gujarat v. Jat Laxmanji Talasji*** [AIR 1988 SC 825].

For the aforesaid reasons, I allow this petition. The *impugned* judgment and order dated 8th March, 1978 passed by the Gujarat Revenue Tribunal, Ahmedabad in Revision Application No. TEN.B.A 248 of 1977 and the orders made by the authorities below are *quashed* and set-aside. Rule is made absolute with costs.

{Ms. R.M Doshit, J.}

*Prakash**